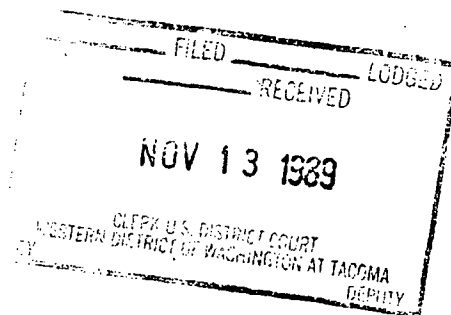


TLFSF
8.4 v2



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
ON BEHALF OF THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
and the
STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiffs,

v.

CITY OF TACOMA,

Defendant.

C89-583T

CIVIL ACTION No.

PRE-SETTLEMENT REMEDIAL
DESIGN STIPULATION AND
AGREED ORDER

STIPULATION AND AGREED ORDER

Plaintiffs, the United States of America, ("United States") and the state of Washington have filed an action under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Section 9606, 9607 et seq., (CERCLA) and the model Toxics Control Act, against the City of Tacoma, ("Settling Parties").

USEPA SF



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1
2 In order to expedite the commencement of the remedial
3 action at the Tacoma Landfill site, which is the subject of this
4 action, the United States and the Settling Parties, stipulate as
5 follows:

6 A. To commence and complete work, submit
7 documents, and to otherwise perform in accordance with the
8 Consent Decree consented to by the Settling Parties and lodged
9 with but not yet entered by this Court.

10 B. The Parties to this stipulation acknowledge
11 that this stipulation has been entered into in anticipation of
12 settlement and may be affected by a consent decree entered
13 subsequent to this filing. The Parties agree to comply with the
14 terms of this stipulation unless the terms of any subsequently
15 entered consent decree expressly supersede the terms of this
16 stipulation.

17 Stipulated by:

18 CITY OF TACOMA

19
20 
21 ERLING O. MORK
22 City Manager
23 City of Tacoma
24 Tacoma, Washington

8/16/89
Date

25 FRED A. THOMPSON
26 Director of Public Works
27 City of Tacoma
28 Tacoma, Washington

16 AUG. 1989
Date

1 Leslie P. Granosh

2 DAVID H. DOW
3 Director of Finance 8/5/89
4 City of Tacoma
Tacoma, Washington

Date 8/15/89

5 Attest: [Signature]

6 City Clerk
7 City of Tacoma
8 Tacoma, Washington

Date 8-16-89

9 Approved as [Signature]
10 to form:

11 Asst.
City Attorney
12 City of Tacoma
Tacoma, Washington

Date Aug 16, 1989

13 UNITED STATES

14 [Signature]

15 STEVEN NOVICK
16 Attorney
17 Land and Natural Resources
Division
18 U.S. Department of Justice
Washington, D.C. 20536

Date 11/6/89

19 [Signature]

20 RICHARD B. STEWART
21 Assistant Attorney General
22 Land and Natural Resources
Division
23 U.S. Department of Justice
Washington, D.C. 20530

Date NW 3/1989

1
2 Robie G. Russell
3 ROBIE G. RUSSELL
4 Regional Administrator
5 Environmental Protection Agency,
6 Region 10
7 Seattle, Washington

Sept. 15, 1989
Date

8
9 MIKE MCKAY
10 UNITED STATES ATTORNEY

11 Jackson L. Fox
12 JACKSON L. FOX
13 Special Assistant United States Attorney
14 3600 Seafirst Fifth Avenue Plaza
15 800 Fifth Avenue
16 Seattle, Washington 98104

November 9, 1989
Date

17
18
19 STATE OF WASHINGTON

20 Carol L. Fleskes
21 CAROL L. FLESKES
22 Hazardous Waste Investigations
23 and Cleanup Program Manager
24 Department of Ecology
25 Olympia, Washington 98504

Aug. 18, 1989
Date

26
27 Jeffrey S. Myers
28 JEFFREY S. MYERS
Assistant Attorney General
State of Washington
Olympia, Washington 98504

Aug 18, 1989
Date

IT IS SO ORDERED this _____ day of _____, 1989.

UNITED STATES DISTRICT JUDGE

ENTERED ON

SEP 24 1990

BY DEPUTY *Jy*RECEIVED
SEP 25 1990ATTORNEY GENERAL'S OFFICE
ECOLOGY DIV.
OLYMPIA

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CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA BY DEPUTY	

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, on behalf
of the UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Plaintiff,

-vs-

CITY OF TACOMA,

Defendant.

NO. C89-5877

ORDER

RECEIVED
SEP 25 1990
OFFICE OF REGIONAL COUNSEL
EPA - REGION X

THIS MATTER comes on before the above-entitled Court upon
Intervenors' Opposition to Entry of a Consent Decree
negotiated by the United States Environmental Protection
Agency and the Washington State Department of Ecology
(plaintiffs) and the City of Tacoma (defendant).

Having considered the entirety of the records and file
herein, the Court finds and rules as follows:

1. The agencies' failure to follow its own technical
guidance documents identifying cap designs which comply with
agency regulations was arbitrary and capricious.

2. The agencies failure to consider likely
environmental impacts before applying the SEPA categorical
exemptions was arbitrary and capricious.

Based on the foregoing, this Court declines to enter the
proposed consent decree submitted by plaintiffs and
defendants.

CC 444
CNSC
(4)

1 The clerk of the court is instructed to send uncertified
2 copies of this Order to all counsel of record.

3 DATED this 21st day of September 1990.
4

5 Paul E. Tanner
6 UNITED STATES DISTRICT JUDGE
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HSCD
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Joe Tieger - Bruce Culpin
475-8372
382-4103

Office of Enf. - ? ask Joe

NCP - Larry Starfield } OGC
interprets statute }

398-8350

399-8352

Joe Tieger

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE WESTERN DISTRICT OF WASHINGTON

4 UNITED STATES OF AMERICA,)
5 and the)
6 STATE OF WASHINGTON,)
7 DEPARTMENT OF ECOLOGY, et al.,)
8 Plaintiffs,)
9 v.)
10 CITY OF TACOMA,)
11 Defendant.)

CIVIL ACTION
NO C89-583T

ORDER MODIFYING
CONSENT DECREE

11 In accordance with the motion of the Government Plaintiffs,
12 and good cause being shown, the Consent Decree and Scope of Work
13 (Appendix II to the Decree) lodged with this Court on November
14 13, 1989 are hereby modified as follows:

15 The Consent Decree is modified in the following respects:

16 -- At paragraph 67, line 19, "October 31, 1989" is changed
17 to read "July 31, 1990" and "January 31, 1990" is changed to read
18 "October 31, 1990."

19 -- At paragraph 67, line 20, "April 30, 1990" is changed to
20 read "January 31, 1991," and "July 31, 1990" is changed to read
21 "April 30, 1991."

22 -- At paragraph 69, line 20, "October 31, 1989" is changed
23 to read "July 31, 1990," and "January 31, 1990" is changed to
24 read "October 31, 1990."

25 -- At paragraph 69, line 21, "April 30, 1990" is changed to
26 read "January 31, 1991," and "July 31, 1990" is changed to read
"April 30, 1991."

1 The Scope of Work is modified in the following respects:

2 -- In the final sentence of section 3.5.8, "Expansion of On-
3 Site Facilities," "no less permeable" is changed to read "no less
4 impermeable."

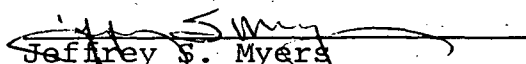
5 -- In the second paragraph of Section 4.0, ",as determined
6 in Section 3.3.2.2," is deleted, as is "show a decreasing trend
7 in contamination and".

8 -- In Table 3, "GROUNDWATER PERFORMANCE CRITERIA," at the
9 bottom of the "Contaminant" list, "Vinyl Chloride" is added, and
10 a corresponding "Performance Criteria (ug/l)" of "2.0" is added.

11
12 DATED this _____ day of _____, 1990.

13
14
15
16 JACK E. TANNER
UNITED STATES DISTRICT JUDGE

17 Presented by:

18
19 
20 Jeffrey S. Myers
Assistant Attorney General

21 Attorney for State of
22 Washington Department
23 of Ecology
24
25
26

84
4/18/90

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Assistant Attorney General
Land and Natural Resources Division
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
and the
STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY, et al.,

Plaintiffs,

v.

CITY OF TACOMA,

Defendant.

CIVIL ACTION
NO C89-583T

GOVERNMENTS' MOTION TO
ENTER CONSENT DECREE
WITH MODIFICATIONS

GOVERNMENTS' MOTION TO - Page 1
ENTER CONSENT DECREE

1 The United States of America and the State of Washington
2 Department of Ecology (Ecology), plaintiffs (hereafter
3 Government Plaintiffs), file this motion to modify the consent
4 decree between the parties previously lodged with this Court, and
5 to enter the Consent Decree as modified.

6 1. On November 13, 1989, the Government Plaintiffs and
7 defendant, the City of Tacoma (City), lodged with the Court a
8 proposed consent decree in settlement of the allegations in the
9 Government Plaintiffs' complaint.

10 2. Pursuant to Section 122 of the Comprehensive
11 Environmental Response, Compensation and Liability Act, as
12 amended (CERCLA), 42 U.S.C. 9622, and the regulations of the
13 Department of Justice, 28 C.F.R. 50.7, on November 20, 1989,
14 notice of lodging of the proposed consent decree was published in
15 the Federal Register to afford the public an opportunity to
16 comment on the decree for 30 days.

17 3. The Department of Justice received comments on the
18 proposed Consent Decree from seven commenters. The United States
19 has considered these comments and consents to the entry of the
20 Consent Decree lodged with the Court, as modified. The United
21 States and the State of Washington have responded to these
22 comments in the attached Responsiveness Memorandum.

23 4. The United States, Ecology and the City have identified
24 several minor modifications which need to be made to the Consent
25 Decree and the Scope of Work (Appendix II to the Consent Decree).
26 The modifications to the Consent Decree are as follows:

1 -- At paragraph 67, line 19, "October 31, 1989" should be
2 changed to read "July 31, 1990" and "January 31, 1990" should be
3 changed to read "October 31, 1990."

4 -- At paragraph 67, line 20, "April 30, 1990" should be
5 changed to read "January 31, 1991," and "July 31, 1990" should be
6 changed to read "April 30, 1991."

7 -- At paragraph 69, line 20, "October 31, 1989" should be
8 changed to read "July 31, 1990," and "January 31, 1990" should be
9 changed to read "October 31, 1990."

10 -- At paragraph 69, line 21, "April 30, 1990" should be
11 changed to read "January 31, 1991," and "July 31, 1990" should be
12 changed to read "April 30, 1991."

13 The modifications to the Scope of Work are as follows:

14 -- In the final sentence of section 3.5.8, "Expansion of On-
15 Site Facilities," "no less permeable" should be changed to read
16 "no less impermeable."

17 -- In the second paragraph of Section 4.0, ", as determined
18 in Section 3.3.2.2," should be deleted, as should "show a
19 decreasing trend in contamination and".

20 -- In Table 3, "GROUNDWATER PERFORMANCE CRITERIA," at the
21 bottom of the "Contaminant" list, "Vinyl Chloride" should be
22 added, and a corresponding "Performance Criteria (ug/l)" of "2.0"
23 should also be added.

24 5. The Index to the United States Environmental Protection
25 Agency ("EPA") Administrative Record for the Tacoma Landfill Site
26 is attached. The Administrative Record is voluminous; it

GOVERNMENTS' MOTION TO - Page 3
ENTER CONSENT DECREE

1 contains a large number of documents and thousands of pages.
2 Should this Court determine to review part or all of the
3 Administrative Record, it is available for the Court's review.


4 6. In accordance with Paragraph 62 of the lodged Consent
5 Decree, concurrent with the filing of this Motion the Government
6 Plaintiffs file a Memorandum of Agreement for the resolution of
7 any dispute arising between the Government Plaintiffs.

8 THEREFORE, plaintiff moves this Court to enter the attached
9 Order modifying the Consent Decree, and to sign and enter the
10 proposed consent decree, as modified, as a final judgment of the
11 Court.

12
13 Respectfully submitted,

14
15 RICHARD B. STEWART
16 Assistant Attorney General
Land and Natural Resources Division
United States Department of Justice

17 MIKE MCKAY
18 United States Attorney
Western District of Washington

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GOVERNMENTS' MOTION TO - Page 5
ENTER CONSENT DECREE

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4 United States Department of Justice

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25 IN THE UNITED STATES DISTRICT COURT
26 FOR THE WESTERN DISTRICT OF WASHINGTON

27 UNITED STATES OF AMERICA,
28 and the
29 STATE OF WASHINGTON,
30 DEPARTMENT OF ECOLOGY, et al.,
31
32 Plaintiffs,

33 v.

34 CITY OF TACOMA,
35
36 Defendant.

)
)
) CIVIL ACTION
) NO C89-583T

)
) GOVERNMENTS' MEMORANDUM
) IN SUPPORT OF MOTION TO
) ENTER CONSENT DECREE

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INTRODUCTION

1 This memorandum is submitted by Plaintiffs, United States of
2 America and the State of Washington (Governments) in support of
3 Memorandum In Support Of Motion
4 To Enter Consent Decree

Page - 1 -

1 their motion for entry of the Consent Decree (Decree) lodged with
2 this Court on November 13, 1989. The Decree, which is the
3 product of months of negotiations, provides prompt and effective
4 cleanup of hazardous waste contamination at the Tacoma Landfill,
5 at Tacoma, Washington (Site). Pursuant to Section 122(d)(2) of
6 the Comprehensive Environmental Response, Compensation and
7 Liability Act, (CERCLA), 42 U.S.C. § 9622(d)(2), and 28 C.F.R. §
8 50.7, the United States has published notice of lodging of the
9 Decree in the Federal Register, and has solicited public comment
10 on the Decree. The State of Washington has likewise published
11 public notice and solicited comment as required by RCW
12 70.105B.070(5). See Affidavit of (b)(6), attached. The
13 Responsiveness Memorandum, attached herewith, contains the
14 Governments' responses to these comments.

15 The Decree is a fast, cost effective response to the hazards
16 presented by the Site, which has been developed in accordance
17 with the requirements of CERCLA. Accordingly, the Governments
18 respectfully request that the Court approve the Decree and enter
19 it so that essential cleanup work can begin at the Site.

20 STATEMENT OF FACTS

21 The United States Environmental Protection Agency (EPA),
22 pursuant to Section 105 of the Comprehensive Environmental
23 Response, Compensation, and Liability Act (CERCLA), 42 U.S.C.
24 § 9605, placed the Commencement Bay/South Tacoma Channel - Tacoma
25 Landfill site in Tacoma, Washington on the National Priorities
26 List, which is set forth at 40 C.F.R. Part 300, Appendix B, by

Memorandum In Support Of Motion
To Enter Consent Decree

Page - 2 -

1 publication in the Federal Register on September 8, 1983, 48 Fed.
2 Reg. 40658 (1983). EPA took this action as a result of
3 investigations which detected hazardous compounds in samples of
4 groundwater and soil near the Site.

5 The Tacoma Landfill began operations in 1960. The wastes
6 received and disposed at the landfill include garbage, rubbish,
7 industrial waste, construction and demolition wastes, street
8 refuse, litter, and bulky waste.

9 Most of the Site has already been filled. The remaining
10 section to be filled is called the Central Area Pit. This
11 section covers approximately 18 acres and was developed during
12 the summer and fall of 1987. A flexible membrane liner and
13 leachate collection system were put in place.

14 Day to day operations of the landfill are regulated by the
15 Tacoma-Pierce County Health Department (TPCHD), with oversight by
16 the Washington Department of Ecology (Ecology); the operating
17 permit is issued annually by TPCHD.

18 In 1986-87, pursuant to a Response Order on Consent issued
19 by Ecology, the City of Tacoma (City), through its consultants,
20 Black and Veatch, performed a 2-phase remedial investigation (RI)
21 to characterize the site and provide the data necessary for a
22 feasibility study (FS). Upon completion of the RI and evaluation
23 of remedial alternatives, the City submitted a draft RI and FS
24 report in September and October 1987 for agency review and
25 approval. The final RI/FS reports were published in December
26 1987. EPA subsequently selected a proposed remedy.

Memorandum In Support Of Motion
To Enter Consent Decree

Page - 3 -

1 On or about January 20, 1988, EPA, pursuant to Section 117
2 of CERCLA, 42 U.S.C. § 9617, published notice of the completion
3 of the RI/FS and of the proposed plan for remedial action and
4 provided opportunity for public comment to be submitted in
5 writing to EPA by March 4, 1988, or orally at a public meeting
6 held in the City of Tacoma, Washington, on February 11, 1988.
7 EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, has
8 kept a transcript of the public meeting and has made this
9 transcript available to the public.

10 EPA and Ecology considered the oral and written comments
11 which members of the public provided on the proposed plan for
12 remedial action. After consideration of these comments, EPA
13 reached a decision on a final remedial action plan. The
14 Defendant is in agreement with such plan.

15 EPA's decision on the final remedial action plan is embodied
16 in a document called a Record of Decision (ROD), issued March 31,
17 1988, in which the State concurs, and which includes a discussion
18 of EPA's reasons for the final plan, a response to each of the
19 significant comments for the proposed remedial action plan and
20 any significant changes (and the reasons for such changes) in the
21 proposed remedial action plan.

22 The remedy selected in the ROD includes requirements for a
23 landfill cap; a gas extraction system; a system for extraction
24 and treatment of contaminated groundwater; and provision of an
25 alternate water supply system to any residents deprived of their
26 domestic water supply due to demonstrated contamination from the

Memorandum In Support Of Motion
To Enter Consent Decree

Page - 4 -

1 Site or from operation of the groundwater extraction and
2 treatment system. The remedy is designed to achieve Maximum
3 Contaminant Levels for drinking water established by EPA under
4 the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq., and 40
5 C.F.R. § 141.64, or appropriate health based levels. Any
6 treatment system which will produce air emissions will be
7 designed to meet any appropriate State Air Toxics Guidelines, and
8 to use Best Available Control Technology (BACT) to treat air
9 emissions. The remedy is estimated by the City to cost
10 approximately \$24 million.

11 Since March 1989, the United States, the State of Washington
12 and the City of Tacoma have been negotiating over cleanup of the
13 Site. The City of Tacoma has agreed to conduct the remedy
14 selected by the Governments, and to reimburse the United States
15 and State of Washington for approximately \$600,000 already spent
16 by them in connection with their activities at the Site.

17 The Governments have filed a complaint against the Defendant
18 in this Court pursuant to Sections 106 and 107 CERCLA, 42 U.S.C.
19 §§ 9606 and 9607 and the State of Washington Model Toxics Control
20 Act, RCW 70.105D.050 (initiative to the Legislature Number 97).

21 RESPONSE TO PUBLIC COMMENTS

22 The public comments received by the Plaintiffs in connection
23 with the Decree are attached as Exhibits 1 through 6. A
24 transcript of the public hearing conducted on November 30, 1989
25 is attached as Exhibit 7. The Plaintiffs have summarized and
26

Memorandum In Support Of Motion
To Enter Consent Decree

Page - 5 -

1 responded to these comments in a Responsiveness Summary which is
2 attached as Exhibit 8.

3 In addition, the Intervenor's have provided comments and
4 criticism on the Decree in their pleadings in this action. As
5 reflected in the Responsiveness Summary and the attached
6 Affidavits of (b) (6)

7 [REDACTED], all of the issues raised by the Intervenor's have
8 previously been considered and addressed by the Governments. The
9 Governments will not restate here each of the comments received
10 and each of our responses; however, we will briefly review the
11 comments and responses with regard to a few issues which the
12 Intervenor's have indicated are of special concern.

13 A. Continued Operation of the Landfill

14 The Intervenor's contend that the Consent Decree should not
15 permit continued operation of the landfill, arguing generally
16 that continued operation will aggravate the existing problems at
17 the landfill. In fact, the Decree and attached Scope of Work
18 contain numerous provisions designed to ensure that continued
19 operation of the landfill will not aggravate existing problems at
20 the landfill. These provisions reflect the fact that the
21 Governments carefully considered this issue, and insisted that
22 further operations of the landfill would be subject to extremely
23 stringent conditions.

24 First, the continued operation of the landfill will be
25 limited to a small area. As explained in the affidavit of (b) (6)
26 [REDACTED], approximately 90 percent of the landfill will be

1 closed and capped by the end of the 1991 construction season.
2 Only the Central Area will remain open. The Decree provides for
3 no lateral expansion of the landfill.

4 Second, the Decree imposes restrictions on the types or
5 waste which can be disposed in the landfill during continued
6 operations. The Decree requires the City to prevent disposal of
7 hazardous substances; prohibits disposal of hazardous wastes; and
8 prohibits disposal of liquids and slurries. These measures are
9 designed to prevent future disposal of additional hazardous
10 substances and liquids at the landfill.

11 At present, the Central Area is partially lined with a
12 liner. The TPCHD has approved a variance for extending the liner
13 pursuant to WAC 173-306-700. However, such an extension of the
14 liner can proceed only in accordance with the conditions
15 contained in 3.5.3 of the SOW (requiring interim cover and
16 partial closure as areas are filled), and only after review and
17 approval of plans by the Governments.

18 In addition, the Decree reserves to the Governments the
19 authority to order the City to immediately cease filling
20 operations at the landfill if necessary to protect public health,
21 safety or the environment. See Scope of Work, Section 3.4.2.1.
22 The requirements of the Decree for monitoring groundwater,
23 landfill gas, air emissions and leachate are designed to ensure
24 that the Governments will have sufficient information to
25 determine whether the continuing operation of the landfill poses
26 a threat to public health, safety, and the environment.

Memorandum In Support Of Motion
To Enter Consent Decree

Page - 7 -

1 Finally, the Decree provides that the landfill shall be
2 closed within ten years. The Decree states that an extension to
3 the ten-year limitation will only be granted if the City meets
4 extraordinarily stringent requirements, detailed at page 8 of the
5 Responsiveness Memorandum (Exhibit 8). Moreover, no extension
6 may be approved without public notice and an opportunity for
7 public comment.

8 Thus, the Decree provides that the continued operation of
9 the landfill will be limited, carefully monitored, and must meet
10 stringent requirements designed to ensure that such continued
11 operations will not aggravate existing conditions at the
12 landfill. These conditions reflect the Governments' commitment
13 to ensuring that the continued operation of the landfill will not
14 interfere with cleanup. The Governments are satisfied that under
15 these conditions, the limited continuing operations contemplated
16 by the Decree will not interfere with cleanup.

17 B. The Landfill Cap

18 The Intervenor have also stated that the Decree
19 contemplates a "single-layer plastic cap" for the landfill, and
20 argue that such a cap is inadequate. They contend that a double
21 layer would be more appropriate.

22 The Intervenor's statement that the Decree requires only a
23 "single layer" cap is, quite simply, false. The Decree requires
24 the use of one of two basic cap designs. See Section 3.4.1 of
25 the SOW. Either two synthetic layers, or one synthetic layer and
26 a 24-inch compacted soil layer must be used. In both cases, a

1 topsoil layer, and drainage layer(s) must also be provided. In
2 the event that a double synthetic liner is used, an additional
3 12-inch bedding soil layer must also be provided. As shown in
4 the affidavit of (b) (6), both designs provide a double
5 layer of protection, and satisfy standards for the closure of
6 hazardous waste facilities.

7 C. Public Participation in the RD/RA Process

8 The Intervenor's argue that the Decree does not provide for
9 effective public participation in activities at the landfill,
10 particularly because, as the Intervenor's noted, the specific
11 design of the remedial action will be established through the
12 submission and approval of over 50 plans and deliverables.

13 This comment is addressed at length at pages 3-6 of the
14 Responsiveness Memorandum. A few points should be emphasized
15 here. First, CERCLA and the National Contingency Plan
16 contemplate that the design of a remedial action will take place
17 in a "Remedial Design" phase. 40 C.F.R. § 300.435. CERCLA also
18 contemplates that potentially responsible parties will undertake
19 remedial actions, including remedial design, pursuant to consent
20 decrees. 42 U.S.C. §9622(d)(1)(A). If the Intervenor's' position
21 is that it is somehow inappropriate to enter a Consent Decree
22 before remedial design is complete, that position conflicts with
23 the express terms of the statute and regulations.

24 Second, as discussed in the Responsiveness Summary, the
25 newly amended National Contingency Plan contains specific
26 provisions governing public notice and participation during the

1 Remedial Design/Remedial Action (RD/RA) process, and the
2 Governments will comply with those provisions during the RD/RA
3 for the Tacoma Landfill. For instance, the NCP now requires
4 distribution of a fact sheet and a public briefing, as
5 appropriate, after completion of final engineering design. 40
6 CFR Part 300.435(c)(3).

7 In addition, EPA and Ecology have obtained a commitment from
8 the City that copies of all plans, reports and other deliverables
9 will be delivered to public document repositories at the same
10 time they are delivered to the agencies. See paragraph 113 of
11 the Decree. EPA and Ecology are also willing to work with
12 specific members of the public who wish to become more involved
13 by arranging for their review of documents of interest.

14 It should also be noted that the remedial action proposed in
15 the Decree is not devoid of detail. A detailed evaluation of the
16 effectiveness of the remedial action has been conducted, the
17 results of which are contained in the FS Report. This report was
18 presented to the public and public comments solicited as part of
19 the proposed remedy on January 20, 1988.

20 Furthermore, the proposed Decree includes specific
21 performance requirements for the design and operation of the
22 remedial action activities. As shown in Section VI of the ROD
23 and in the affidavit of (b)(6), such standards are
24 protective of public health and the environment and are in
25 accordance with CERCLA. The proposed Decree also identifies the
26 necessary components of the landfill cap, the landfill cap

Memorandum In Support Of Motion
To Enter Consent Decree

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1 installation schedule, and the necessary elements of the surface
2 water management plan and gas extraction system. While many of
3 the design details remain to be developed, the feasibility of the
4 remedial action requirements has been determined, and the
5 criteria for evaluating and approving design and implementation
6 plans are specifically identified.

7 D. The Consent Decree Addresses
8 Groundwater Migration and Landfill Gas

9 The Intervenor's contend that operation of the landfill has
10 caused contamination of groundwater under property surrounding
11 the landfill. The Governments acknowledge this fact. However,
12 as shown in the Responsiveness Summary (pages 29-30) and the
13 attached affidavit of (b) (6), groundwater contamination
14 will be addressed under the Consent Decree. Contamination will
15 be controlled and migration prevented.

16 The Intervenor's further contend that there has been
17 migration of landfill gas containing hazardous substances onto
18 adjoining properties, including their own, and that there is
19 substantial risk of underground fires with the current and
20 proposed gas control system. The Intervenor's specifically
21 questioned the ability of the gas control system to deal with
22 gas movement caused by the installation of the cap.

23 As described in the attached affidavit of (b) (6),
24 system inspections, monitoring, modifications of pumping rates,
25 and installation of additional monitoring and extraction probes
26 will be employed to prevent off-site migration and to reduce the
risk of underground fires.

Memorandum In Support Of Motion
To Enter Consent Decree

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1 The Decree specifically recognizes the potential for lateral
2 gas movement after the cap is installed. To deal with this
3 possibility, the Decree requires additional monitoring and, if
4 necessary, corrective action if such movement is detected. See
5 Responsiveness Memorandum at 23-24.

6 ARGUMENT

7 BECAUSE THE CONSENT DECREE PROVIDES FOR PROMPT,
8 EFFECTIVE CLEANUP OF THE TACOMA LANDFILL, IT IS
9 CLEARLY IN THE PUBLIC INTEREST, AND SHOULD BE
ENTERED BY THIS COURT

10 A. Public Policy Favors CERCLA Settlements

11 "Public policy strongly favors settlements of disputes
12 without litigation." Aro Corp. v. Allied Witan Co., 531 F.2d
13 1368, 1372, (6th Cir.), cert. denied, 429 U.S. 862 (1976). There
14 is a

15 clear policy in favor of encouraging
16 settlements . . . particularly in an area
17 where voluntary compliance by the parties . .
18 . will contribute significantly toward
19 ultimate achievement of statutory goals.

20 Patterson v. Newspaper & Mail Deliverers Union of New York, 514
21 F.2d 767, 771 (2d Cir. 1975), cert. denied, 427 U.S. 911 (1976).
22 The consent decree is a "highly useful tool for government
23 agencies," for it "maximizes the effectiveness of limited law
24 enforcement resources" by permitting the government to obtain
25 compliance with the law without lengthy litigation. United
26 States v. City of Jackson, 519 F.2d 1147, 1151 (5th Cir. 1975).

In CERCLA cases, strong public policies favor settlements of
government claims by consent decree. A fundamental goal of the
CERCLA enforcement program is to facilitate voluntary settlements

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To Enter Consent Decree

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1 in order to expedite remedial actions and minimize litigation.
2 When CERCLA was reauthorized in 1986 in the Superfund Amendments
3 and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat.
4 1613 (codified at 42 U.S.C. § 9601 et seq.), Congress recognized
5 the importance of entering into negotiations and reaching
6 settlements with PRPs to allow them to conduct or finance
7 response actions at hazardous waste sites. Unique among this
8 nation's environmental laws, CERCLA, as amended, includes
9 extensive provisions for private potentially responsible parties
10 to perform remedial actions under Section 106. Section 122(a)
11 affords the United States the discretion to enter into an
12 agreement with any person to perform response action at a site.
13 42 U.S.C. § 9622(a). Section 122 authorizes EPA and the
14 Department of Justice to conduct settlement negotiations, defines
15 the scope of any covenant not to sue that a settlement may
16 provide, and provides for public comment on proposed settlements.
17 Id. § 9622. In addition, Section 122(d) requires that
18 settlements involving implementation of remedial actions must be
19 embodied in judicial consent decrees, subject to court approval.
20 Id. § 9622(d).

21 Voluntary settlements are far preferable to litigated
22 cleanups. First, it is preferable for potentially responsible
23 parties, rather than the Federal government, to undertake and
24 finance cleanups. While CERCLA authorizes Fund-financed cleanup
25 of hazardous waste sites by the government, the Fund is limited
26 and cannot finance cleanup of all of the many hazardous waste

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To Enter Consent Decree

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1 sites nationwide. The fund is intended to finance cleanup "if
2 the site has been abandoned, if the responsible parties elude
3 detection, or if private resources are inadequate." New York v.
4 Shore Realty Corp., 759 F.2d 1032, 1041 (2d Cir. 1985).

5 Accordingly,

6 spending precious Superfund monies on a site
7 when there are responsible parties ready and
8 willing to spend private monies to accomplish
the same result would hardly be an effective
use of government resources.

9 United States v. Conservation Chemical Co., 628 F. Supp. 391, 403
10 (W.D. Mo. 1985).

11 Second, while Section 106 authorizes the United States to
12 seek an injunction compelling responsible parties to clean up a
13 hazardous waste site, voluntary cleanup under a consent decree is
14 preferable for obvious reasons. A settlement entered into prior
15 to litigation and trial will avoid disproportionate transaction
16 costs and will result in a more timely response to the hazard
17 posed by the site. See United States v. Hooker Chemicals &
18 Plastics Corp., 540 F. Supp. 1067, 1072 (W.D.N.Y. 1982). See also
19 U.S. v. Rohm & Haas Co., 721 F. Supp. 666 at 678-79 (D.N.J.
20 1989); U.S. v. Cannons Engineering Corp., 720 F. Supp. 1027 at
21 1036, 1048 (D. Mass. 1989), aff'd, No. 89-1979 (slip op., 1st
22 Cir., Mar. 20, 1990). Rejection of a negotiated voluntary cleanup
23 plan will delay cleanup during further litigation. See
24 Conservation Chemical Co., supra, 628 F. Supp. at 402.
25 Furthermore, cleanup of a hazardous waste site is a technically
26 complex undertaking. Site remediation conducted pursuant to a

Memorandum In Support Of Motion
To Enter Consent Decree

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1 mutually agreed upon cleanup plan and schedule in a consent
2 decree is less likely to require intervention by a court, but in
3 the event problems do arise, a consent decree, through its
4 dispute resolution provisions, affords the parties ready access
5 to the court for resolution of disputes. See generally United
6 States v. City of Jackson, 519 F.2d 1147, 1152 n. 9 (5th Cir.
7 1975).

8 B. Standard of Review

9 Review of a Consent Decree is committed to the informed
10 discretion of the trial judge. United States v. Hooker Chemical
11 & Plastic Corp., 776 F.2d 410, 411 (2d Cir. 1985). This
12 discretion should be exercised to further the strong policy
13 favoring voluntary settlement of litigation. See United States
14 v. Hooker Chemical & Plastics Corp., 776 F.2d at 411; Citizens
15 for a Better Environment v. Gorsuch, 718 F.2d 1117 at 1126 (D.C.
16 Cir. 1983).

17 Although a consent decree, as a judicial act, requires
18 approval by the court, the reviewing court does not have power to
19 modify a consent decree; it can only approve or reject the
20 consent decree. Walsh v. Great Atlantic & Pacific Tea Co., 726
21 F.2d 956, 965 (3d Cir. 1983). The controlling criterion is not
22 what might have been agreed upon, nor what the district court
23 believes might have been the optimal settlement, but rather
24 whether the settlement is fair, reasonable and consistent with
25 statutory goals. See Armstrong v. Board of School Directors, 616
26 F.2d 305, 315 (7th Cir. 1980).

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To Enter Consent Decree

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1 Where a court is reviewing a consent decree to which the
2 government is a party, the balancing of competing interests
3 affected by a proposed consent decree "must be left, in the first
4 instance, to the discretion of the Attorney General." United
5 States v. Bechtel Corp., 468 F.2d 660, 666 (9th Cir.), cert.
6 denied, 454 U.S. 1083 (1981); see also Sam Fox Publishing Co. v.
7 United States, 366 U.S. 683, 689 (1961) (the government has the
8 discretion over accepting a consent decree unless there is bad
9 faith or malfeasance); United States v. Associated Milk
10 Producers, Inc., 534 F.2d 113, 117 (8th Cir.), cert. denied, 429
11 U.S. 940 (1976) (Attorney General must retain discretion in
12 "controlling government litigation and in determining what is in
13 the public interest"). This principle is particularly important
14 where the consent decree has been negotiated by the Justice
15 Department on behalf of a federal administrative agency
16 "specially equipped, trained and oriented in the field." United
17 States v. National Broadcasting Co., 449 F. Supp. 1127, 1144
18 (C.D. Cal. 1978). Thus, the Ninth Circuit has held that

19 [u]nless a consent decree is unfair, inadequate, or
20 unreasonable, it ought to be approved . . . [T]he
21 courts should pay deference to the judgment of the
government agency which has negotiated and submitted
the proposed judgment."

22 Securities and Exchange Commission v. Randolph, 736 F.2d 525 at
23 529 (9th Cir. 1984).

24 C. Factors For A Court To Consider In
25 Reviewing a CERCLA Consent Decree

26 Congress and the courts have identified a series of factors
for a court to consider in reviewing a proposed CERCLA

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To Enter Consent Decree

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1 settlement. The legislative history for the 1986 amendments to
2 CERCLA establishes that a court's role in reviewing a Superfund
3 settlement is to "satisfy itself that the settlement is
4 reasonable, fair, and consistent with the purposes that CERCLA is
5 intended to serve." H.R. Rep. No. 253, Part 3, 99th Cong., 1st
6 Sess. 19 (1985). This three part test of (1) fairness, (2)
7 reasonableness, and (3) consistency with CERCLA's goals, is
8 similar to the three part test the courts have used in evaluating
9 settlements under CERCLA, prior to the 1986 amendments. United
10 States v. Conservation Chemical Co., 628 F. Supp. 391, 400 (W.D.
11 Mo. 1985); United States v. Seymour Recycling Corp., 554 F. Supp.
12 1334, 1337-38 (S.D. Ind. 1982). It also parallels the standard
13 enunciated by the Ninth Circuit for the review of consent decrees
14 generally. See Securities and Exchange Commission v. Randolph,
15 736 F.2d at 529.

16 Consequently, in considering the Decree here, this Court
17 should evaluate its fairness, reasonableness, and consistency
18 with Congress's goals in enacting CERCLA.

19 1. The Consent Decree is Fair

20 In United States v. Hooker Chemical & Plastics Corp., 607 F.
21 Supp. 1052, 1057 (W.D.N.Y.), aff'd 776 F.2d 410 (2d Cir. 1985),
22 the court noted that in determining whether a settlement is fair,
23 a court should look to factors such as "the good faith efforts of
24 the negotiators, the opinions of counsel, and the possible risks
25 involved in litigation if the settlement is not approved." Based
26 on this standard, the proposed Decree is unquestionably fair.

1 The proposed Decree is the product of months of hard
2 bargaining by the parties. There is no suggestion in the record
3 that the Decree represents anything other than the fruit of
4 intensive arms-length negotiations.

5 The City is the only defendant in this action. The City has
6 agreed to assume the entire burden of funding and completing
7 remedial action at the facility. In this action, unlike an
8 action involving multiple defendants, the question of whether the
9 Decree is fair to remaining non-settling defendants does not even
10 arise.

11 2. The Partial Consent Decree Is Reasonable

12 The courts have set forth several criteria relevant to
13 whether a Superfund settlement is "reasonable," including: (1)
14 the nature and extent of the hazards at the site; (2) the degree
15 to which the remedy provided for in the Decree will adequately
16 address the hazards present at the site; (3) the possible
17 alternative approaches for remedying the hazards at the site.
18 United States v. Conservation Chemical Co., 628 F. Supp. at 401,
19 relying on United States v. Seymour Recycling Corp., supra, 554
20 F. Supp at 1339.

21 In applying these criteria, however, courts have a "limited
22 duty" to inquire into the technical aspects of a consent decree
23 in order to ensure that the proposed settlement adequately
24 addresses environmental and public health concerns. See United
25 States v. Hooker Chemicals & Plastics Corp., 540 F. Supp. 1067,
26 1072 (W.D.N.Y. 1982). EPA is entrusted with the duty and

1 responsibility to select an appropriate remedial action. 42
2 U.S.C. § 9621 ("[t]he President shall select appropriate remedial
3 actions ... to be carried out under section 9604 or secured under
4 section 9606"). Because selection of a remedy involves balancing
5 of numerous complex technical factors within EPA's expertise, the
6 selection of the remedy by EPA must be upheld unless the agency
7 acted in an arbitrary and capricious manner. See, e.g., United
8 States v. Northeastern Pharmaceutical and Chemical Co., 810 F.2d
9 726, 748 (8th Cir. 1986), cert. denied, ___ U.S. ___, 108 S. Ct.
10 146 (1987); United States v. Ward, 618 F. Supp. 884, 900
11 (E.D.N.C. 1985). Congress has recently confirmed this principle
12 in the 1986 Amendments to CERCLA by explicitly incorporating this
13 "arbitrary and capricious" test in Section 113(j)(2) of CERCLA,
14 42 U.S.C. § 9613(j)(2).

15 In United States v. Cannons Engineering Corp. et al., 720 F.
16 Supp. 1027 (D. Mass. 1989), aff'd, No. 89-1979 (slip op., 1st
17 Cir., Mar. 20, 1990), the District Court cited 42 U.S.C. §9613 in
18 concurring with Hooker that the court had a "limited duty to
19 inquire into the technical aspects of the cleanup program
20 proposed by a consent decree." 720 F. Supp. at 1038. In
21 deciding to enter the consent decree before it, over the
22 objection of non-settling defendants, the court observed that the
23 remedies proposed by the consent decree had been selected by EPA
24 in accordance with the National Contingency Plan, after public
25 comment, pursuant to Records of Decision. Id. at 1039.
26

Memorandum In Support Of Motion
To Enter Consent Decree

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1 The basis for the remedy selected for the Tacoma Landfill
2 site is explained in EPA's Record of Decision (ROD), which is
3 attached as Appendix I to the Consent Decree. As indicated in
4 the ROD, the selected remedial action was chosen in compliance
5 with Section 121 of CERCLA, 42 U.S.C. § 9621, and protects human
6 health and the environment at the Site. The Decree provides that
7 the City will implement every aspect of the remedy selected in
8 the ROD.

9 The comments received during the public comment period are
10 discussed above and in the Responsiveness Memorandum attached as
11 Exhibit 8. The Government Plaintiffs have considered and
12 addressed each of the issues raised by those comments. The
13 Decree contains provisions designed to ensure that each of the
14 concerns raised by the commenters will be addressed in a manner
15 consistent with the goals and requirements of CERCLA.

16 To summarize: the remedy embodied in the Decree has been
17 chosen in compliance with the relevant statutory standards.
18 There is no reason to question the technical adequacy of the
19 remedy. The proposed Decree is therefore a reasonable settlement
20 of this case.

21 3. The Decree Furthers CERCLA's Goals

22 Finally, the Decree implements the specific statutory
23 policies underlying this case and is in the public interest. See
24 United States v. Hooker Chemical & Plastic Corp., Supra., 607 F.
25 Supp. at 1057. The goal of CERCLA is "to protect and preserve
26 public health and the environment" from the effects of the

Memorandum In Support Of Motion
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1 release of hazardous substances into the environment. Dedham
2 Water Co. v. Cumberland Farms Dairy, Inc., 805 F.2d 1074 at 1081
3 (1st Cir. 1986); Lone Pine Steering Committee v. EPA, 600 F.
4 Supp. 1487, 1489 (D.N.J.), aff'd 777 F.2d 882 (3d Cir. 1985),
5 cert. denied, 476 U.S. 1115 (1986).

6 Clearly, this settlement furthers CERCLA's goals. As the
7 court in Conservation Chemical noted in a similar context, a
8 settlement such as this furthers CERCLA's goals in three ways.
9 First, it provides for cleanup of a hazardous waste site that is
10 a serious enough environmental and public health problem to have
11 qualified for listing on the National Priorities List. Second,
12 the settlement will result in an expeditious cleanup of the Site
13 by private parties. Finally, the settlement will produce a
14 cleanup of a Superfund site with little or no expenditure of
15 scarce Superfund dollars. United States v. Conservation Chemical
16 Co., 628 F. Supp. at 402-03.

17 b. Any Judicial Review of the Governments Response Action
18 Decisions, as Reflected in the Record of Decision and the
19 Consent Decree, Must Be Based on the Administrative Record,
Applying the Arbitrary and Capricious Standard.

20 The Intervenor's may argue that the remedy selected by EPA
21 for the Tacoma Landfill site, as set forth in the Record of
22 Decision, and detailed in the Scope of Work attached to the
23 Consent Decree, is inappropriate. Such an attack on EPA's
24 remedial decision is untimely; it would have been more
25 appropriate had the Intervenor's voiced their doubts on the
26 adequacy of the remedy during the public comment period on the
proposed plan for remedial action which EPA published in January

Memorandum In Support Of Motion
To Enter Consent Decree

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1 1988. However, Intervenor failed to take advantage of that
2 opportunity. The Decree currently before this Court merely sets
3 out the remedy that was duly selected in 1988.

4 Even if it were appropriate for the Intervenor to challenge
5 EPA's remedy selection at this late date, the Intervenor would
6 have to bear a heavy burden to show that EPA's remedy selection
7 decisions should be overturned. CERCLA provides that judicial
8 review of response actions selected by the United States is
9 limited. The 1986 Amendments to CERCLA, in Section 113(j)(2),
10 identify the standard and scope of review to be used by the
11 courts in their consideration of the EPA's selection of response
12 actions:

13 (1) Limitation- In any judicial action under
14 this Act, judicial review of any issues
15 concerning the adequacy of any response
16 action taken or ordered by the President
shall be limited to the administrative
record.

17 (2) Standard- In considering objections
18 raised in any judicial action under this Act,
19 the Court shall uphold the President's
20 decision in selecting the response action
21 unless the objecting party can demonstrate,
on the administrative record, that the
22 decision was arbitrary and capricious or
23 otherwise not in accordance with law.
24 [Emphasis supplied.]

25 42 U.S.C. § 9613(j)(1) and (2).
26


1
2 CONCLUSION

3 For the reasons above, this Court should enter the proposed
4 Consent Decree.

5 Respectfully submitted,

6
7 RICHARD B. STEWART
8 Assistant Attorney General
9 Land and Natural Resources Division
10 United States Department of Justice

11
12 MIKE MCKAY
13 United States Attorney
14 Western District of Washington

15 
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Memorandum In Support Of Motion
To Enter Consent Decree

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1 The Scope of Work is modified in the following respects:

2 -- In the final sentence of section 3.5.8, "Expansion of On-
3 Site Facilities," "no less permeable" is changed to read "no less
4 impermeable."

5 -- In the second paragraph of Section 4.0, ",as determined
6 in Section 3.3.2.2," is deleted, as is "show a decreasing trend
7 in contamination and".

8 -- In Table 3, "GROUNDWATER PERFORMANCE CRITERIA," at the
9 bottom of the "Contaminant" list, "Vinyl Chloride" is added, and
10 a corresponding "Performance Criteria (ug/l)" of "2.0" is added.

11
12 DATED this _____ day of _____, 1990.

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16 JACK E. TANNER
UNITED STATES DISTRICT JUDGE
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18 IN THE UNITED STATES DISTRICT COURT
19 FOR THE WESTERN DISTRICT OF WASHINGTON

20 UNITED STATES OF AMERICA,
ON BEHALF OF THE UNITED STATES
21 ENVIRONMENTAL PROTECTION AGENCY
and the
22 STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

23 Plaintiffs,

24 v.

25 CITY OF TACOMA,

26 Defendant.

CIVIL ACTION
NO. C89-583T

DECLARATION OF
STEVE NOVICK

DECLARATION OF STEVEN NOVICK - PAGE 1

1 STEVEN NOVICK declares that:

2 1. I am an attorney with the U.S. Department of
3 Justice. I made this declaration in support of the United
4 States' and the State of Washington's (the "Governments") motion
5 to enter the proposed consent decree in this case.
6

7 2. Section 9622(d)(2) of the Comprehensive
8 Environmental Response, Compensation and Liability Act, (CERCLA),
9 42 U.S.C. §9622(d)(2), and 28 C.F.R. §50.7 require that the
10 United States publish in the Federal Register a notice of the
11 lodging of a proposed consent decree under CERCLA, and provide
12 the public 30 days in which to submit comments on the Decree.

13 3. On November 13, 1988, the Governments lodged with
14 this Court a proposed consent decree in this case.

15 4. On November 20, 1989, I caused to be published in
16 the Federal Register, a notice of lodging of the proposed Decree,
17 a copy of which is attached.

18 5. For a period of thirty days, the United States
19 accepted comments regarding the proposed Decree. These comments
20 are attached as exhibits to the Governments' Motion to Enter the
21 Decree. The Governments' response to these comments are
22 contained in the Governments' Memorandum in Support of Motion to
23 Enter Consent Decree.

24 6. Accordingly, the Governments have complied with the
25 requirements of 42 U.S.C. §9622(d)(2) and 28 C.F.R. §50.7.
26

DECLARATION OF STEVEN NOVICK - PAGE 2

1 7. I declare under penalty of perjury that the
2 foregoing is true and correct.

3 DATED: 4/18/90

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5 STEVEN NOVICK
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DECLARATION OF STEVEN NOVICK - PAGE 3

Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 14, 1989.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-27226 Filed 11-17-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation and Liability Act, City of Tacoma

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 13, 1989 a proposed consent decree in *United States and the State of Washington Department of Ecology v. City of Tacoma*, was lodged with the United States District Court for the Western District of Washington. The proposed consent decree concerns a complaint filed by the United States and the State of Washington Department of Ecology against the City of Tacoma, Washington pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, to compel the City to carry out the remedial action contemplated by a Record of Decision, issued by the Environmental Protection Agency on March 31, 1988 for the Tacoma Landfill site. The Tacoma Landfill site is located in Tacoma, Washington and is owned and operated by the City of Tacoma. The Tacoma Landfill Site was placed on the National Priorities List in 1983. The consent decree provides that the City shall undertake the remedial action contemplated by the ROD and shall pay the past and future costs of the United States and the State of Washington which the United States and the State have incurred or will incur for response actions at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States*

v. City of Tacoma, Washington, D.J. Ref. 90-11-2-381.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Washington, 3600 Seafirst Fifth Avenue Plaza, 800 Fifth Avenue, Seattle, Washington, and at the Region X Office of the United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-27216 Filed 11-17-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act, Weyerhaeuser Co.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Weyerhaeuser Company*, Civil Action No. 89-C-973-C, has been lodged on November 8, 1989, with the United States District Court for the Western District of Wisconsin. The complaint filed by the United States pursuant to section 113 of the Clean Air Act, 42 U.S.C. 7413, alleged that the defendant violated applicable provisions of the federally enforceable Wisconsin State Implementation Plan ("SIP") by emitting bursts of sulfur dioxide (SO₂) in concentrations injurious to public health and welfare.

The proposed Decree requires Weyerhaeuser to install additional pollution control equipment and to achieve, by June 15, 1991, over a ten-fold reduction in its emissions of SO₂. The decree also requires Weyerhaeuser to pay a civil penalty of \$20,000, and provides for significant stipulated penalties in the event that Weyerhaeuser fails to comply with decree requirements.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be

addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20503, and should refer to the *United States v. Weyerhaeuser Company*, D.J. Reference No. 90-5-1-1-3304.

The proposed Consent Decree may be examined at the office of the United States Attorney, Room 420, 120 N. Henry Street, Madison, Wisconsin 53703 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Lands and Natural Resources Division of the Department of Justice, Room 1647 (D), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of \$2.40 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-27229 Filed 11-17-89; 8:45 am]

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Lodging of Consent Decree Pursuant to Safe Drinking Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 7, 1989 a proposed consent decree in *United States v. Benson*, Civil Action No. 87-245-E, was lodged with the United States District Court for the Western District of New York. The proposed consent decree concerns a complaint filed by the United States that alleged violations of the underground injection control ("UIC") program set forth at Part C of the Safe Drinking Water Act, 42 U.S.C. 300h *et seq.*, and its implementing regulations codified at 40 CFR parts 144, 146, and 147 Subpart HH, at the Benson-Zink lease in Allegany Township, Cattaraugus County, New York. The complaint alleged that defendant Benson operated enhanced recovery injection wells on the lease without authorization. The complaint sought injunctive relief to require compliance with the UIC program and civil penalties for past violations. Since the filing of the complaint, defendant Benson has obtained the authorizations required by the UIC program. The decree requires